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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 10-0859 RS
)	
Plaintiff,)	THE UNITED STATES' MOTION IN LIMINE TO
)	PRECLUDE ADMISSION OF DOCUMENTS
v.)	UNDER PROTECTIVE ORDER
)	
GARY LEE HARDEMAN,)	Date: July 10, 2013
)	Time: 2:30 p.m.
Defendant.)	Place: Courtroom 3, 17th Floor
)	

INTRODUCTION

The United States respectfully moves *in limine* for an order precluding the admission into evidence of the documents subpoenaed by the defense under protective order.

The defense provided the government with discovery on June 12, 2013, and June 20, 2013. This discovery included documents subpoenaed by the defendant under a protective order issued by the Court on July 20, 2011. The documents consist of the following: (1) filings, custody assessments, and court orders relating to the victim's custody proceedings; (2) the victim's mental and physical health evaluations, interviews, and diagnoses; and (3) the victim's school records. According to the protective

1 order, the subpoenaed documents are for “Attorney Eyes Only,” and may not be disclosed to any other
2 person, or used at trial, unless the party seeking to use the documents makes an application to the Court
3 explaining the need to do so.

4 The defense has not yet submitted an application to use the subpoenaed documents at trial.
5 However, in the event the defense submits such an application, the government respectfully requests the
6 Court to preclude admission of the subpoenaed documents. The documents are not relevant to the present
7 prosecution and their admission would result in unfair prejudice to the victim, confusion of the issues,
8 misleading the jury, and wasting time.

9 10 **ARGUMENT AND AUTHORITIES**

11 Under the Federal Rules of Evidence, all relevant evidence is generally admissible unless there is a
12 reason for exclusion. Fed. R. Evid. 402. Relevant evidence is defined as “evidence having any tendency
13 to make the existence of any fact that is of consequence ... more probable or less probable than it would be
14 without the evidence.” Fed. R. Evid. 401. Relevant evidence is subject to exclusion, however, under Fed.
15 R. Evid. 403, if its probative value is substantially outweighed by a danger of unfair prejudice, confusing
16 the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

17 The Court should preclude admission of the filings, custody assessments, and court orders relating
18 to the victim’s custody proceedings. Following the victim’s abandonment in Mexico in December 2007
19 and June 2008, agencies and courts in Mexico and the United States attempted to either reunite the victim
20 with her family or place her in a foster home in the United States. The documents produced in this effort
21 therefore include filings by attorneys and social workers seeking a resolution to the victim’s custody
22 status, assessment reports compiled by agencies such as the Texas Department of Family and Protective
23 Services and the Department of Education, Health, and Social Development in Mexico, and court orders
24 from Mexico and Texas relating to the victim’s custody. These documents are collateral to the present
25 prosecution. The issues stemming from the victim’s custody proceedings do not contain information
26 relating to the alleged sexual abuse at issue in this trial. Rather, the issues contained in these documents
27 concern assessments of the victim’s home life in the United States, including the abuse she suffered at the
28 hands of her family in Texas, and logistical matters regarding the victim’s custody determinations. As a

1 result, these documents will not elucidate the specific events that transpired in Mexico between the
2 defendant and the victim in December 2007. This is especially true of the custody proceedings following
3 the victim's abandonment in June 2008, which, apart from being a collateral matter, are temporally distant
4 from the specific events at issue in trial. Even assuming these documents are relevant, however, their
5 probative value is greatly outweighed by the danger of unfair prejudice to the victim, confusion of the
6 issues, misleading the jury, and wasting time. Introduction of these documents will unnecessarily devote
7 time to the victim's home life in the United States. This will wrongly force attention on sensitive
8 childhood issues affecting the victim, apart from the alleged sexual abuse already at trial. It will also
9 unnecessarily expose the jurors to information that does not directly bear on the relevant events that
10 occurred in Mexico in December 2007 between the defendant and the victim, thereby wasting time and
11 risking confusion of the issues and misleading the jury. Consequently, the Court should preclude
12 admission of the documents relating to the victim's custody proceedings.

13 The Court should also preclude admission of the evaluations, interviews, and diagnoses of the
14 victim's mental and physical health. These documents have been compiled in connection to the victim's
15 custody proceedings and placements. They provide information regarding the victim's mental and
16 physical health following her abandonment in Mexico in December 2007 and June 2008 for the purpose of
17 determining an appropriate resolution to her custody status and assessing her adjustment to foster care.
18 The information contained in these documents is also collateral to the present case. The majority of the
19 information was compiled after the June 2008 incident, and thus well after the alleged sexual abuse by the
20 defendant in December 2007. In addition, because the mental and physical reports were compiled as part
21 of the victim's custody proceedings in an effort to track her ability to adapt with foster families, they only
22 marginally offer evidence bearing on the alleged sexual abuse in Mexico in December 2007. Indeed, the
23 physical health reports are routine and superficial in nature, and the mental health reports touch on a
24 variety of issues, such as the victim's mother's psychological evaluations and the victim's relationship
25 with her family, which have no bearing on the alleged sexual abuse. If admitted into evidence, the reports
26 would unfairly prejudice the victim, waste time, confuse the issues, and mislead the jury. Admission of
27 the reports would focus unnecessary attention on the victim's upbringing and family issues, which are
28 sensitive matters personal to the victim. In addition, admission of the reports would divert the attention of

1 the jury from the specific offense at issue to the victim's life story, most of which does not bear on the
2 alleged sexual abuse in Mexico in December 2007. As a result, the reports detailing the victim's mental
3 and physical health should be precluded from admission into evidence.

4 Finally, the Court should preclude admission of the victim's school records. These records are
5 dated from 2008 to the present, and contain the victim's test scores, independent education plans, and
6 other reports regarding her placement and progress in school. These records do not provide information
7 bearing upon the alleged sexual abuse of the victim by the defendant in Mexico in December 2007, and
8 are therefore wholly irrelevant to the present case. If admitted into evidence, these records would waste
9 time by focusing on extraneous information about the victim that does not touch upon the elements of the
10 crime. As a result, the Court should preclude admission of the victim's school records.

11 CONCLUSION

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13 For the reasons stated above, the Court should grant the government's motion *in limine* to preclude
14 the admission of the documents under protective order.

15 DATED: June 26, 2013

Respectfully submitted,

17 MELINDA HAAG
18 United States Attorney

19 /s/

20 JANAKI GANDHI
21 Special Assistant United States Attorney